

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

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In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

Disclosures by Operator
Service Providers Serving
Public Phones

CC Docket No. 92-77

RM-8606

RECEIVED

APR 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS

MCI Telecommunications Corporation (MCI) hereby
comments on the (1) ex parte communication filed jointly by
a number of parties¹ in the Billed Party Preference (BPP)
proceeding (the Joint Petitioners), and (2) petition for
rulemaking filed by the National Association of Attorneys
General (NAAG) concerning operator services disclosures.

JOINT PETITIONERS' EX PARTE COMMUNICATION

The Joint Petitioners argue that the Commission should
enact a "rate ceiling" for operator services instead of
mandating the implementation of BPP because the latter is
not cost-justified; will take several years to implement;
and is broadly opposed. Moreover, they argue, "[t]he
unblocking of access codes, coupled with the branding of

¹ The ex parte communication (Ex Parte Communication)
was filed by the Competitive Telecommunications Association,
Bell Atlantic, BellSouth Telecommunications, NYNEX, US West,
American Public Communications Council, MFS Communications
Company, Inc. and Teleport Communications Group, all
entities with differing reasons to deny consumer choice in
the operator services area.

calls and the vast sums spent on consumer education, leave rates as the only remaining area of concern"² with respect to operator services, which concern can be addressed and resolved with a rate ceiling.

MCI strongly disagrees with the Joint Petitioners' self-serving claims concerning the "facts" developed in the BPP proceeding and it strongly opposes the proposed rate ceiling alternative. In its Comments and Reply Comments,³ MCI demonstrated that the Commission's cost/benefit analysis, in which the Commission tentatively concluded that the benefits of BPP outweigh the costs, is correct and that the cost estimates to implement BPP submitted by the local exchange carriers (LECs) are too high. In addition, although Joint Petitioners argue that many industry participants oppose BPP, they fail to mention that consumers filed comments in support of BPP because it provides consumer and competitive benefits that simply are not achievable through any other means.

The Joint Petitioners also are incorrect in their claim that "price gouging" is the only remaining area of concern in the operator services market. The NAAG petition demonstrates that consumers still cannot access their carrier-of-choice because access code dialing is blocked.

² Ex Parte Communication at 2.

³ See MCI's Comments and Reply Comments, CC Docket No. 92-77, filed on August 1, 1994 and September 14, 1994, respectively.

In any event, consumers want to be able to access their preferred carrier with the ease and convenience of 0+ dialing. And, the Commission recently initiated a proceeding on operator services, in part, because consumers still are not aware of the identity of the presubscribed OSP at aggregator locations due to failures to post accurate information. A rate ceiling will not address these problems.

Moreover, the rate ceiling alternative, MCI submits, would not eliminate price gouging and would be costly and burdensome to administer. The Commission would have to conduct a proceeding to prescribe the rate that would establish the ceiling -- an activity that clearly would be contrary to the Commission's policy of reducing regulation by reliance upon marketplace competition. And, any rate ceiling imposed by the Commission likely would result in a court appeal -- thus, further adding to the Commission's regulatory burden and costs. In addition, for a rate ceiling to have any positive effect, the Commission would have to enforce it. In this regard, the Florida Commission's experience is instructive in that it conducted eleven proceedings and discovered over \$2 million in overcharges "[d]espite implementation of [its] rate cap...."⁴

A rate ceiling also would not necessarily work to

⁴ Florida Reply Comments, CC Docket No. 92-77, at 2.

benefit consumers. As an initial matter, since OSPs do not really compete for the consumer's (as distinct from the phone or property owner's) business, they would have no incentive to charge a rate lower than the ceiling. Thus, in effect, the "rate ceiling" likely would end up being a "rate floor" as well. In addition, according to certain OSPs, their costs of providing service are higher than those of MCI, AT&T and Sprint and, possibly, any rate ceiling. OSPs that demonstrated higher costs -- through Commission proceedings -- would be entitled to charge higher rates in order to recover those costs.⁵ As a result, consumers still might be faced with the prospect of being charged rates higher than their preferred carrier's rates -- but, those rates would be sanctioned by the Commission. Moreover, to avoid those rates, consumers still would have to dial access codes which is not the preferred access method and is not always possible due to blocking.

The fact that the Commission has conducted continuous rulemaking and enforcement proceedings concerning operator service abuses throughout the past 4 1/2 years -- with no less than three proceedings since the beginning of this year -- demonstrates that no amount of regulation or consumer

⁵ It seems elementary that, as a matter of law, the Commission could not establish a rate that did not permit a carrier to recover its costs in providing service. Indeed, it is better left to a competitive market -- one that will come to fruition with the implementation of BPP -- to force inefficient and high-cost service providers from the marketplace.

education will prevent abuses because the current system creates the wrong incentives. OSPs compete to win business by becoming the presubscribed carrier through paying-off premise owners with "commissions" for certain traffic. Some OSPs recover those commission payments by charging outrageously high rates to consumers. And, some aggregators maximize their commission payments by blocking access to alternative OSPs. These "incentives" will not be overcome by rate ceilings because that approach will not reach the core problem.

The only way to foreclose abuse is to change the incentives, really, modifying behavior, by implementation of BPP, which will encourage OSPs to redirect their competitive efforts toward consumers. After all, consumer needs and wants should be the driving force in a competitive industry. Thus, the Commission must decide if it intends to protect consumers and encourage true competition by mandating BPP or if it intends to continue to protect certain industry participants at the expense of consumers. In light of the clear direction in the Communications Act of 1934, as amended, and the Commission's long-standing policy to promote competition, the Commission, MCI submits, must reject the Joint Petitioners' proposal and order the implementation of BPP.

THE NAAG PETITION

The Commission also seeks comment on the NAAG's request that OSPs be required to provide additional information to consumers who use payphones or other public phones. Specifically, NAAG urges the Commission to adopt a requirement that OSPs whose rates are not at or below dominant carrier rates provide a statement during the call such as the following:

"This may not be your regular telephone company and you may be charged more than your regular telephone company would charge for this call. To find out how to contact your regular telephone company call 1-800-555-1212."

NAAG believes this additional disclosure is necessary because operator service abuses continue in the marketplace. Thus, the NAAG states that consumers are charged exorbitant rates by unknown carriers; access-code blocking still occurs; aggregators do not post the identity of the OSP on their phones; and some OSPs do not clearly brand or provide rate information in a timely fashion.

The NAAG's proposal would not prevent these abuses, in MCI opinion. Under Section 201(b) of the Communications Act of 1934, OSPs are required to charge "reasonable rates" and, under existing rules, they are required to disclose those rates on request. It seems likely that OSPs which fail to comply with these existing requirements would also fail to comply with the NAAG's proposed requirement. And, for OSPs which follow the current requirements and charge reasonable

rates, the NAAG's proposal would impose an additional and unnecessary regulatory burden that would increase call set-up time and costs which, ultimately, would lead to higher rates for consumers.

Finally, the NAAG's disclosure requirement would not, as suggested, "foster price competition for users of public phone services" or "provide consumers with a fairer opportunity to make an informed purchase of OSP services." Rather, these objectives or goals, sound as they are, will be achieved only when consumers are guaranteed the ability to access their carrier-of-choice through the implementation of BPP.

CONCLUSION

Based on the foregoing, MCI urges the Commission to reject the Joint Petitioners' Ex Parte Communication and the NAAG's petition and, instead, order the prompt implementation of BPP.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

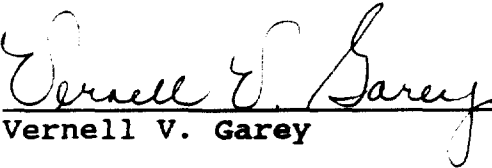
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Dated: April 12, 1995

CERTIFICATE OF SERVICE

I, Vernell V. Garey, do hereby certify that on this 12th day of April 1995, copies of the foregoing "**COMMENTS**" in CC Docket No. 92-77 and RM 8606 were served by first-class mail, postage prepaid, unless otherwise indicated, upon the parties on the attached list.


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